



**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS**  
**WASHINGTON DC 20314-1000**

REPLY TO  
ATTENTION OF

CECW-PC

**JUN 17 2009**

**MEMORANDUM FOR SEE DISTRIBUTION**

**SUBJECT: Pre-Approved Deviations for Use in Non-Federal Sponsor Performance Environmental Infrastructure Agreements When the Agreement Contemplates Reimbursement of the Federal Share Using Funds Made Available by the American Recovery and Reinvestment Act of 2009, Public Law 111-5**

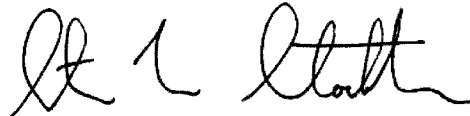
1. Reference: Assistant Secretary of the Army for Civil Works memorandum to the Director of Civil Works, dated 15 June 2009, subject: Pre-Approved Deviations for Use in Non-Federal Sponsor Performance Environmental Infrastructure Agreements When the Agreement Contemplates Reimbursement of the Federal Share Using Funds Made Available by the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (enclosure 1).
2. Effective today, the enclosed pre-approved deviations (enclosures 2 and 3) shall be incorporated into any new Environmental Infrastructure (EI) agreements or, existing EI agreements, as appropriate, when the work is performed by the non-Federal sponsor and some or all of the reimbursement of the Federal share will be made using American Recovery and Reinvestment Act of 2009 (ARRA) funds. Districts shall not make a reimbursement to a non-Federal sponsor under an agreement using ARRA funds until the enclosed pre-approved deviations are incorporated into the agreement.
3. There are two versions of the pre-approved deviations. The first consists of text to be added to a new non-Federal sponsor performance EI agreement where some or all of the reimbursement of the Federal share will be made with ARRA funds. The second consists of an amendment to amend a previously executed non-Federal sponsor performance EI agreement where some or all of the reimbursement of the Federal share will be made with ARRA funds.
4. Approval of use of these pre-approved deviations is delegated to the Major Subordinate Command (MSC) Commander and may be further delegated to the District Commander. Division Counsel concurrence, or District Counsel concurrence if approval authority is further delegated to the District Commander, is required prior to approval of a project specific agreement containing the pre-approved deviation or approval of an amendment using the pre-approved amendment text. In addition, use of the pre-approved deviations in a new agreement shall not be considered a deviation from the model when determining, in accordance with the implementation memo for such model, the appropriate approval authority for that project specific agreement.

CECW-PC

SUBJECT: Pre-Approved Deviations for Use in Non-Federal Sponsor Performance  
Environmental Infrastructure Agreements When the Agreement Contemplates  
Reimbursement of the Federal Share Using Funds Made Available by the American  
Recovery and Reinvestment Act of 2009, Public Law 111-5

5. The District Commander is authorized to execute the project specific amendment to previously executed agreements developed using the pre-approved amendment text, after its approval, including amendments that require MSC approval.
6. Data on reimbursements of the Federal share using ARRA funds shall be included in funding notification reports in compliance with procedures established by the Office of Management and Budget.

FOR THE COMMANDER:



3 Encls

STEVEN L. STOCKTON, P.E.  
Director of Civil Works

DISTRIBUTION:

COMMANDER, GREAT LAKES AND OHIO RIVER DIVISION  
COMMANDER, MISSISSIPPI VALLEY DIVISION  
COMMANDER, NORTH ATLANTIC DIVISION  
COMMANDER, NORTHWESTERN DIVISION  
COMMANDER, PACIFIC OCEAN DIVISION  
COMMANDER, SOUTH ATLANTIC DIVISION  
COMMANDER, SOUTH PACIFIC DIVISION  
COMMANDER, SOUTHWESTERN DIVISION  
CECW-LRD  
CECW-MVD  
CECW-SAD  
CECW-NWD  
CEMP-NAD  
CEMP-POD  
CEMP-SPD  
CEMP-SWD



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

JUN 15 2009

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Pre-Approved Deviations for Use in Non-Federal Sponsor Performance Environmental Infrastructure Agreements When the Agreement Contemplates Reimbursement of the Federal Share Using Funds Made Available by the American Recovery and Reinvestment Act of 2009, Public Law 111-5

This responds to CECW-PC memorandum dated June 9, 2009, requesting approval of certain modifications to subject agreements as pre-approved deviations.

The modifications are hereby approved. Approval and execution of subject agreements that use the pre-approved deviations are delegated to Corps Headquarters (including re-delegation to Major Subordinate Commands or the Districts, as appropriate), within the parameters specified in the draft implementation memorandum enclosed with CECW-PC memorandum of June 9, 2009.

Terrence C. Salt  
Acting Assistant Secretary of the Army  
(Civil Works)

2009 /

**Preapproved Deviations for Use Only in Non-Federal Sponsor Performance  
Environmental Infrastructure Agreements When the Agreement Contemplates  
Reimbursement of the Federal Share Using Funds Made Available by the American  
Recovery and Reinvestment Act of 2009, Public Law 111-5  
and Agreement for Project Has Not Been Executed**

**1. Insert the following, preceding the Whereas clause stating that the parties have full authority and capability to perform:**

WHEREAS, Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (hereinafter the "Recovery Act") requires recipients of Recovery Act funds to report certain information on the use of Recovery Act funds, and the Government intends to provide Recovery Act funds to the Non-Federal Sponsor as reimbursement of the Federal share pursuant to the terms of this Agreement; and

**2. Insert the following as the last article of the Agreement.**

**A. Fill in article number.**

**B. Correct the references in lines 2 and 18, as needed: (1) Design/construction or construction only agreements for all Environmental Infrastructure (EI) authorities, except Section 313 – use Article II.D. in line 2 and Article II.C. in line 18; (2) Design only agreements for all EI authorities, except Section 313 - use Article II.C. in line 2 and Article II.B. in line 18; (3) Section 313 design/construction – use Article II.K. in line 2 and Article VII in line 18; (4) Section 313 construction only – use Article II.H. in line 2 and Article VII in line 18; and (5) Section 313 design only – use Article II.G. in line 2 and Article V in line 18. These corrections are not considered deviations.**

**C. For amendments to Section 313 agreements – do not italicize the phrase "total project costs".**

**ARTICLE \_\_ - RECOVERY ACT REQUIREMENTS**

The Government intends to fund reimbursement to the Non-Federal Sponsor, pursuant to Article II.D. of this Agreement, with Recovery Act funds in whole or in part. The Recovery Act requires special reporting by recipients of Recovery Act funds in order to maximize transparency of the use of Recovery Act funds. Not later than ten calendar days after the close of each calendar quarter in which the Non-Federal Sponsor receives Recovery Act funds, the Non-Federal Sponsor shall report the information described in Section 1512(c) of the Recovery Act using the reporting instructions and data elements available online at that time at <http://www.FederalReporting.gov> or its successor, and shall ensure that any information that is pre-filled is corrected or updated as appropriate. Information from these reports will be made available to the public. The Non-Federal Sponsor shall maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) until project close out, including maintaining a Dun and Bradstreet Data Universal Numbering System (DUNS) Number

*Page 2*

(<http://www.dnb.com>). The Non-Federal Sponsor also shall comply with all other applicable Recovery Act provisions, including Sections 1605 (regarding the requirement to use American iron, steel, and manufactured Goods for certain projects) and 1606 (regarding wage rates). The Non-Federal Sponsor's costs of complying with this Article shall be eligible for inclusion in *total project costs* in accordance with, and subject to the limitations of, Article II.C. of this Agreement.

**Preapproved Deviations for Use Only in Non-Federal Sponsor Performance  
Environmental Infrastructure Agreements When the Agreement Contemplates  
Reimbursement of the Federal Share Using Funds Made Available by the American  
Recovery and Reinvestment Act of 2009, Public Law 111-5  
and Agreement for Project Has Been Executed**

**AMENDMENT**

**NOTES:**

- 1. FORMAT.** - Remove the cover pages, notes section, all bold type references to notes, and any bold type text from the amendment prior to forwarding for review.
- 2. TITLE OF AMENDMENT.** - Text of title should match title of original agreement. Fill in blank with type of assistance shown in title of original agreement – DESIGN AND CONSTRUCTION, CONSTRUCTION, OR DESIGN.
- 3. AMENDMENT NUMBER.** - Fill in the number of the amendment. The number assigned should sequentially follow the number of the last executed amendment to the agreement for this project. (Example: If this is first amendment – this should be Amendment No. 1 but if have two previously executed amendments – this should be Amendment No. 3)
- 4. MULTIPLE SPONSORS.** If the original executed agreement had multiple sponsors identified in the first paragraph and on the signature page, all the entities identified as sponsors should sign the amendment. The changes below are required for an amendment with multiple sponsors. These changes are not considered deviations.
  - A.** Modify title and first paragraph to include name of each entity serving as a sponsor – as in original executed agreement.
  - B.** Change “Non-Federal Sponsor” to “Non-Federal Sponsors” throughout the amendment.
  - C.** On the signature page, a separate signature block will be required for each entity serving as a sponsor.
  - D.** A separate Certificate of Authority will be required for each entity serving as a sponsor.
  - E.** A Certification Regarding Lobbying must be signed by each signatory to the amendment.
- 5. REFERENCE TO NON-FEDERAL SPONSOR.** - Use “Non-Federal Sponsor”, “Local Sponsor”, “State”, “County”, “Commonwealth”, “Territory” or other identifier in the

parenthetical phrase and consistently throughout the amendment as shown in the original executed agreement. This change is not considered a deviation.

**6. NON-FEDERAL SPONSOR REPRESENTATIVE.** – Insert the title of the sponsor’s representative signing the amendment. Do not include the name, only the title. The title shown for the sponsor’s representative should match the title shown on the signature page and should be preceded by “the” or “its”, as appropriate, to match the title of the sponsor’s representative. (Example: the Mayor)

**7. FIRST WHEREAS CLAUSE.**

**A.** Choose Option (1) if the original agreement addressed design and construction assistance; Option (2) if the original agreement addressed only construction assistance; or Option (3) if the original agreement addressed only design assistance. Delete, in their entirety, the options not used.

**B.** The civilian format for the date should be used. (Example: January 22, 2009)

**8. WHEREAS CLAUSE ADDRESSING PRIOR AMENDMENTS.**

**A.** If there are no prior amendments to the original executed agreement (this would be Amendment No.1), delete this Whereas Clause. Deletion of this Whereas Clause is not considered a deviation.

**B.** If there are prior amendments, include a Whereas Clause for each prior amendment following the format shown. The first blank should be the date of the amendment and the second blank should be a short description of what was accomplished by that amendment.

**C.** Choose Option (1) if this is the first amendment to the original executed agreement or Option (2) if the original executed agreement has been amended previously. Delete, in its entirety, the option not used.

**9. ADDED ARTICLE.**

**A.** Fill in article number.

**B.** Correct the references in lines 2 and 18, as needed: (1) Design/construction or construction only agreements for all Environmental Infrastructure (EI) authorities, except Section 313 – use Article II.D. in line 2 and Article II.C. in line 18; (2) Design only agreements for all EI authorities, except Section 313 - use Article II.C. in line 2 and Article II.B. in line 18; (3) Section 313 design/construction – use Article II.K. in line 2 and Article VII in line 18; (4) Section 313 construction only – use Article II.H. in line 2 and Article VII in line 18; and (5) Section 313 design only – use Article II.G. in line 2 and Article V in line 18. These corrections are not considered deviations.

C. For amendments to Section 313 agreements – do not italicize the phrase “total project costs”.

**10. CERTIFICATE OF AUTHORITY.** - The attorney signing the Certificate of Authority cannot be the signatory to the amendment. The attorney signing the Certificate of Authority is certifying that the signatory to the amendment has the authority to sign for the sponsor. Do not forget to fill in the name in the first line prior to execution of the amendment.

**11. PREPARING AMENDMENT FOR SIGNATURE.**

A. When printing the amendment for execution: 1) remove the cover page, notes section, bold type references to notes, and any bold type text from the amendment; 2) ensure that the appropriate information has been included in all blanks in the amendment and the Certificate of Authority; and 3) ensure that there are no page breaks which allow half empty pages.

B. Since this is a civilian document use the civilian version of the District Engineer’s signature block.

C. Before signature by the Government representative, ensure that the sponsor signs and dates a minimum of four copies of the amendment, and Certification Regarding Lobbying, and that the Certificates of Authority are signed and dated by the appropriate people. The date on the first page should be filled in by the Government representative signing the amendment, not the sponsor.

D. The Government should retain two copies of the fully executed amendment. All other copies should be provided to the sponsor. A photocopy or a pdf file (as determined by the MSC) of the fully executed amendment should be provided to the MSC within 7 days after execution of the amendment.



**[SEE NOTE - 2]**

AMENDMENT NO. **[SEE NOTE - 3]**  
TO  
AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
**[FULL NAME OF NON-FEDERAL SPONSOR(S) AS SHOWN ON EXECUTED AGREEMENT]**  
FOR  
\_\_\_\_\_  
ASSISTANCE  
FOR THE  
**[FULL NAME OF PROJECT AS SHOWN ON EXECUTED AGREEMENT]**

THIS AMENDMENT NO. **[SEE NOTE - 3]** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, \_\_\_\_\_ District (hereinafter the "District Engineer"), and the **[FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED AGREEMENT]** **[SEE NOTE - 5]** (hereinafter the "Non-Federal Sponsor"), represented by the **[SEE NOTE - 6]**.

WITNESSETH, THAT:

**[SEE NOTE - 7]**

WHEREAS, the Government and the Non-Federal Sponsor entered into an agreement on \_\_\_\_\_ (hereinafter the "Agreement") for **[SEE NOTE - 7 - CHOOSE: (1) design and construction (2) construction (3) design]** of the **[FULL NAME OF PROJECT AS SHOWN ON EXECUTED AGREEMENT]**;

**[SEE NOTE - 8]**

WHEREAS, the Government and the Non-Federal Sponsor entered into an Amendment to the Agreement on \_\_\_\_\_ to \_\_\_\_\_;

WHEREAS, Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (hereinafter the "Recovery Act") requires recipients of Recovery Act funds to report certain information on the use of Recovery Act funds, and the Government intends to provide Recovery Act funds to the Non-Federal Sponsor as reimbursement of the Federal share pursuant to the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to **[SEE NOTE - 8 - CHOOSE: (1) amend the Agreement (2) further amend the Agreement]** as follows to document the requirement of the Non-Federal Sponsor to report the information required by the Recovery Act:

[SEE NOTE – 9]

1. The following is added as Article \_\_\_\_ of the Agreement.

ARTICLE \_\_\_\_ - RECOVERY ACT REQUIREMENTS

The Government intends to fund reimbursement to the Non-Federal Sponsor, pursuant to Article II.D. of this Agreement, with Recovery Act funds in whole or in part. The Recovery Act requires special reporting by recipients of Recovery Act funds in order to maximize transparency of the use of Recovery Act funds. Not later than ten calendar days after the close of each calendar quarter in which the Non-Federal Sponsor receives Recovery Act funds, the Non-Federal Sponsor shall report the information described in Section 1512(c) of the Recovery Act using the reporting instructions and data elements available online at that time at <http://www.FederalReporting.gov> or its successor, and shall ensure that any information that is pre-filled is corrected or updated as appropriate. Information from these reports will be made available to the public. The Non-Federal Sponsor shall maintain a current registration in the Central Contractor Registration (<http://www.ccr.gov>) until project close out, including maintaining a Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>). The Non-Federal Sponsor also shall comply with all other applicable Recovery Act provisions, including Sections 1605 (regarding the requirement to use American iron, steel, and manufactured Goods for certain projects) and 1606 (regarding wage rates). The Non-Federal Sponsor's costs of complying with this Article shall be eligible for inclusion in *total project costs* in accordance with, and subject to the limitations of, Article II.C. of this Agreement.

2. All other terms and conditions of the [SEE NOTE - 8 - CHOOSE: (1) Agreement (2) Agreement, as amended] remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. [SEE NOTE – 3] which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

NAME OF NON-FEDERAL SPONSOR

BY: \_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

[SEE NOTE – 10]

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, do hereby certify that I am the principal legal office of the [FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED AGREEMENT], that the [FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED AGREEMENT] is a legally constituted public body with full authority and legal capability to perform the terms of Amendment No. [SEE NOTE - 3], between the Department of the Army and the [FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED AGREEMENT] in connection with the [FULL NAME OF PROJECT AS SHOWN ON EXECUTED AGREEMENT], and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed Amendment No. [SEE NOTE - 3] on behalf of the [FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED AGREEMENT] have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NAME  
TITLE

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
NAME  
TITLE OF SIGNATORY TO AMENDMENT

DATE:\_\_\_\_\_